

1 BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

2 1000 FRIENDS OF WASHINGTON

3 Petitioners,

Case No. 05-2-0002

4 v.

5 THURSTON COUNTY,

FINAL DECISION AND ORDER

6 Respondent,

7 And,

8 WILLIAM AND GAIL BARNETT AND

9 ALPACAS OF AMERICA,

10 Intervenor.

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13 **I. SYNOPSIS OF DECISION**

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15 Thurston County was one of the first counties in this Board's jurisdiction to engage in
16 thorough and collaborative planning. Its commendable early efforts led to the adoption of a
17 comprehensive plan in 1995 on which the County has largely relied in meeting its update
18 requirements under RCW 36.70A.130. In 2002, the County adopted its Buildable Lands
19 Report, a thorough and well-documented analysis of land available for development and
20 projected demand for such lands through 2025. In 2004, Thurston County met its deadline
21 under RCW 36.70A.130(4) to timely conduct a review and, if needed, revision of its
22 comprehensive plan and development regulations to ensure compliance with the Growth
23 Management Act (GMA) (Chapter 36.70A RCW).

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26 In this decision, the Board is asked to determine whether Thurston County's 2004 update of
27 its comprehensive plan and development regulations complies with the requirements of
28 RCW 36.70A.130 to "review and, if needed, revise its comprehensive plan policies and
29 development regulations to ensure the plan and regulations comply with the requirements of
30 this chapter." RCW 36.70A.130(1).
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1 We observe that many elements of the County's comprehensive plan and development
2 regulations further the goals and requirements of the GMA in creative and impressive ways
3 and are compliant. However, we find there are several areas in which the County did not
4 meet its update requirements.
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7 First, Thurston County has not revised its Rural Element as necessary to comply with the
8 GMA. It has relied upon its earlier plan provisions to continue a policy of allowing rural
9 residential development in high density zones -- Residential -- One Unit per Two Acres;
10 Residential -- One Unit per One Acre; Residential -- Two Units per One Acre; and
11 Residential -- Four Units per Acre -- without complying with the GMA requirements for
12 limited areas of more intensive rural development (LAMIRDs). It has also allowed rural
13 densities in its RR 1/5 zone to develop at densities of one dwelling unit per four acres.
14 While the County argues that it should not have to disturb policies it established years ago
15 for these areas, this argument fails to address the update requirement to revise existing
16 policies where necessary to ensure compliance with the GMA. RCW 36.70A.130. These
17 policies and regulations create intense rural residential densities without meeting GMA
18 requirements for limiting those areas and are therefore non-compliant. RCW
19 36.70A.070(5)(d). The County further has failed to establish a variety of rural densities in
20 the rural area as required by RCW 36.70A.070(5)(b) by establishing no rural designations or
21 zones that have less intense densities than one dwelling unit per five acres.
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25 Second, the County's urban growth areas (UGAs) provide a significant excess of land
26 supply over projected demand for such urban lands through 2025. Both land supply and
27 projected land demand were reviewed for purposes of its buildable lands analysis in 2002.
28 Buildable Lands Report, September 2002. At that time, it was determined that there was
29 sufficient land in the UGAs to accommodate projected growth. However, the buildable lands
30 analysis also showed that there was a significant excess of available residential lands in the
31 urban areas over the projected demand for such lands through 2025. The UGA boundaries
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1 established in the 2004 update continue to provide excess lands within the UGA boundaries
2 beyond the demand calculated on the basis of the OFM population projection chosen by the
3 County. This excess of urban land supply for the population allocated to (and therefore land
4 demand projected for) urban growth areas during the 20-year planning horizon fails to
5 comply with RCW 36.70A.110. In addition, two cities, Tenino and Bucoda, sought to have
6 their urban growth areas enlarged to accommodate development to support sewer systems
7 for those UGAs. The County concurred and expanded areas in the Tenino and Bucoda
8 UGAs, but did not adjust the population allocations to comport with the land supply the UGA
9 boundaries provide. This, too, fails to correlate demand for urban lands with the supply of
10 those lands as required by RCW 36.70A.110.
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13 Finally, the County has adopted designation criteria for agricultural resource lands that
14 exclude lands that otherwise meet the statutory criteria for designation. The first of these
15 excludes lands that are not currently being used for agriculture from designation as
16 agricultural resource lands. The Supreme Court has determined that the statutory definition
17 of agricultural lands is based on whether the lands are "in an area where the land is actually
18 used *or capable of being used* for agricultural production." *City of Redmond v. Central*
19 *Puget Sound Growth Management Hearings Board*, 136 Wn.2d 38, 53, 959 P.2d 1091,
20 1998 Wash. LEXIS 575 (1998). The second challenged County agricultural lands
21 designation criterion requires a predominant parcel size of 20 acres or more. Regardless of
22 common ownership or use, farms consisting of more than one parcel of less than 20 acres
23 would not be conserved under this criterion. Since farm size is not equivalent to parcel size,
24 this criterion may exclude viable farms from conservation and protection. For these
25 reasons, both of these policies fail to comply with RCW 36.70A.030, RCW 36.70A.060, and
26 36.70A.170.
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31 Although Petitioner has requested a finding of invalidity as to the noncompliant provisions of
32 the rural and urban element (and their implementing development regulations), we decline

1 to enter an invalidity finding at this time. The record before the Board does not persuade us
2 that inconsistent development will occur during the remand period such that proper planning
3 cannot take place without the imposition of invalidity. However, if circumstances change
4 and Petitioner brings forward a basis for believing that substantial interference with the
5 goals of the GMA may be occurring during the remand period, we would consider setting a
6 compliance hearing to rule upon a properly supported motion to impose invalidity before the
7 compliance period expires. RCW 36.70A.330(4).
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9 10 **II. PROCEDURAL HISTORY**

11 On November 22, 2004, the Thurston County Commissioners adopted Resolution No.
12 13234 and Ordinance No. 13235. Both legislative enactments, by their terms, were adopted
13 to comply with the requirement in RCW 36.70A.130 that the County review and, if
14 necessary, revise its comprehensive plan and development regulations to ensure the plan
15 and regulations comply with the Growth Management Act (Ch. 36.70A RCW), no later than
16 December 1, 2004. RCW 36.70A.130(4). Resolution No. 13234 amends the County's
17 comprehensive plan. Ordinance No. 13235 amends the County's development regulations.
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20 Petitioner, 1000 Friends of Washington (now known as "Futurewise"), filed a petition for
21 review of these two adoptions on January 21, 2005. A prehearing conference was held on
22 February 17, 2005. On March 23, 2005, the County filed a Motion to Dismiss or Limit Issues
23 arguing that the Petitioner had failed to join cities as indispensable parties and that the
24 appeal of the urban growth areas (UGAs) was time barred. Petitioner opposed the motion,
25 Petitioner Futurewise's Response to Motion to Dismiss or Limit Issues, April 4, 2005. The
26 Board denied the County's motions. Order on Motions to Dismiss, April 21, 2005.
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30 On April 27, 2005, Petitioner requested permission to file a motion to add the League of
31 Women Voters of Thurston County as a Petitioner. Request for Permission to File Motion
32 and Motion to Add the League of Women Voters of Thurston County as a Petitioner. The

1 County opposed the motion. Respondent's Opposition to Petitioner's Motion to Add the
2 League of Women Voters of Thurston County as a Petitioner, May 9, 2005. This motion
3 was denied:

4 There is no explanation provided in the Petitioner's request why this motion could not
5 have been brought within the timelines set in the Prehearing Order. Nor is any
6 excuse offered for the failure of the proposed petitioner to file a timely petition for
7 review itself. At this stage in the proceedings, it is unduly burdensome on the County
8 and the Board to be considering a new issue that apparently could have been raised
9 in the timeframe set by the Prehearing Order.

10 Order Denying Leave to File Motion, May 16, 2005.

11 On May 20, 2005, Intervenor William and Gail Barnett and Alpacas of America moved to
12 intervene in this case. Intervenor owns property that was added to the Tenino UGA in the
13 County's 2004 update of its comprehensive plan. Arguing that Intervenor had only recently
14 learned that this case "directly affects the Tenino UGA," Intervenor submitted the substance
15 of its brief with its motion. Motion to Intervene by William and Gail Barnett and Alpacas of
16 America, and Statement of Issues and Argument Concerning the Tenino UGA, May 20,
17 2005. The parties had no objection and intervention was granted subject to certain
18 conditions. Order Granting Intervention to William and Gail Barnett, and Alpacas of
19 America, June 3, 2005.

22 The County moved to supplement the Index to the Record with Index Nos. 466 – 528.
23 Motion to Supplement the Record, April 4, 2005. Petitioner had no objection and the Index
24 was supplemented as the County requested. Order on Motion to Supplement the Record,
25 May 5, 2005.

28 At the hearing on the merits, the Board allowed the parties to submit additional materials in
29 response to Board questions. As part of its post-hearing submission, the County provided
30 the Board with the Buildable Lands Report for Thurston County, September 2002 (Index
31 No. 43); the Population and Employment Forecast for Thurston County, Final Report (Index
32

No. 208); and the Population and Employment Forecast for Thurston County, Volume II: Appendix (Index No. 209). The City of Tenino also asked and was granted leave to supply the Board with answers to its questions concerning adopted updated development regulations. This was submitted in the form of the Letter of Dan Carnrite, Senior Planner, to the Board, dated June 21, 2005. Intervenor submitted a blow-up of the Thurston County buildable lands map and post-argument brief. Intervenor's Post-Hearing Brief, June 23, 2005. Petitioner objects and moves to strike the post-hearing brief submitted by Intervenor as submitting additional argument. Petitioner Futurewise's Objection to Post-Hearing Arguments. To the extent that the Intervenor's brief submits argument rather than responsive materials, Petitioner's motion to strike is granted.

III. ISSUES PRESENTED¹

1. Does the adoption of Resolution 13234 and Ordinance 13235 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.070, RCW 36.70A.110(1) and RCW 36.70A.130 when they allow, through several rural area designations totaling over 21,000 acres, development at densities of greater than one unit per five acres when this board has determined that such densities fail to comply with the GMA?
2. Does the adoption of Resolution 13234 and Ordinance 13235 fail to comply with RCW 36.70A.070 and RCW 36.70A.130 when they fail to provide for a variety of rural densities, providing instead that the only GMA compliant rural designations allow a uniform one unit per five acres?
3. Does the adoption of Resolution 13234 and Ordinance 13235 fail to comply with RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.110 and RCW 36.70A.130 when the ordinances establish *urban growth areas* that substantially exceed the capacity necessary to accommodate the Washington *Office of Financial Management* population forecast adopted by the County, even assuming a 25 percent market factor? This issue

¹ Petitioner elected not to pursue Issue No. 5 of the Prehearing Order: "Does the adoption of Resolution 13234 and Ordinance 13235 fail to comply with RCW 36.70A.020(1), RCW 36.70A.110 and RCW 36.70A.130 when they allow densities in unincorporated *urban growth areas* of less than 4 units per acre?" Petitioner's Futurewise's and League of Women Voters Prehearing Brief at 29. An issue not addressed in petitioner's brief is considered abandoned. *WEC v. Whatcom County*, WWGMHB Case No. 95-2-0071 (Final Decision and Order, December 20, 1995).

1 includes UGAs that preexisted these ordinances that were too large and a UGA
2 expansion effected by these ordinances.

- 3 4. Does the adoption of Resolution 13234 and Ordinance 13235 fail to comply with RCW
4 36.70A.020(8), RCW 36.70A.060, RCW 36.70A.170, RCW 36.70A.050 and RCW
5 36.70A.130 when they fail to designate and conserve hundreds of acres of land that
6 meet the GMA criteria for agricultural lands of long term commercial significance?
- 7 5. Does the continued validity of the violations of RCW Title 36.70A in Section 7 of
8 Ordinance 13235 described above, substantially interfere with the fulfillment of the goals
9 of the Growth Management Act such that the enactments at issue should be held invalid
10 pursuant to RCW 36.70A.302?

11 12 **IV. BURDEN OF PROOF**

13 For purposes of board review of the comprehensive plans and development regulations
14 adopted by local government, the GMA establishes three major precepts: a presumption of
15 validity; a "clearly erroneous" standard of review; and a requirement of deference to the
16 decisions of local government.

17
18 Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and
19 amendments to them are presumed valid upon adoption:

20
21 Except as provided in subsection (5) of this section, comprehensive plans and
22 development regulations, and amendments thereto, adopted under this chapter are
23 presumed valid upon adoption.
24 RCW 36.70A.320(1).

25
26 The statute further provides that the standard of review shall be whether the challenged
27 enactments are clearly erroneous:

28 The board shall find compliance unless it determines that the action by the state
29 agency, county, or city is clearly erroneous in view of the entire record before the
30 board and in light of the goals and requirements of this chapter.
31 RCW 36.70A.320(3)
32

1 In order to find the County's action clearly erroneous, the Board must be "left with the firm
2 and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*,
3 121 Wn.2d 179, 201, 849 P.2d 646 (1993).
4

5 Within the framework of state goals and requirements, the boards must grant deference to
6 local government in how they plan for growth:
7

8 In recognition of the broad range of discretion that may be exercised by counties and
9 cities in how they plan for growth, consistent with the requirements and goals of this
10 chapter, the legislature intends for the boards to grant deference to the counties and
11 cities in how they plan for growth, consistent with the requirements and goals of this
12 chapter. Local comprehensive plans and development regulations require counties and
13 cities to balance priorities and options for action in full consideration of local
14 circumstances. The legislature finds that while this chapter requires local planning to
15 take place within a framework of state goals and requirements, the ultimate burden and
16 responsibility for planning, harmonizing the planning goals of this chapter, and
17 implementing a county's or city's future rests with that community.
18 RCW 36.70A.3201 (in part).
19

20 In sum, the burden is on the Petitioner to overcome the presumption of validity and
21 demonstrate that any action taken by the County is clearly erroneous in light of the goals
22 and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).
23 Where not clearly erroneous and thus within the framework of state goals and requirements,
24 the planning choices of local government must be granted deference.
25

26 V. DISCUSSION

27 ***Issue No. 1: Does the adoption of Resolution 13234 and Ordinance 13235 fail to***
28 ***comply with RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.070, RCW***
29 ***36.70A.110(1) and RCW 36.70A.130 when they allow, through several rural area***
30 ***designations totaling over 21,000 acres, development at densities of greater than***
31 ***one unit per five acres when this board has determined that such densities fail to***
32 ***comply with the GMA?***

Positions of the Parties

1 Petitioner argues that the County's comprehensive plan creates rural land use designations
2 that are neither rural in density nor compliant with the statutory provisions for limited areas
3 of more intensive rural development (LAMIRDs). Petitioners Futurewise's and League of
4 Women Voters of Thurston County Prehearing Brief at 8-14.² Petitioner points to the
5 following designations of rural lands in the County's comprehensive plan: Residential – One
6 Unit per Two Acres; Residential – One Unit per One Acre; Residential – Two Units per One
7 Acre; and Residential – Four Units per Acre. Index No. 89, Land Use Chapter Attachment
8 Table 2-1A Percentage of Land Allocated for Rural Uses, p. 2-19. Petitioner then points to
9 the provisions in the County's development regulations (zoning code) that allow rural
10 residential densities greater than one dwelling unit per five acres. Petitioners Futurewise's
11 and League of Women Voters of Thurston County Prehearing Brief at 9; Index No. 64.
12 Petitioner urges that allowable residential densities on rural lands may not exceed one
13 dwelling unit per five acres unless the rural designation complies with the requirements for a
14 LAMIRD pursuant to RCW 36.70A.070(5)(d).
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18 The County responds that the 2004 comprehensive plan update did not change the zoning
19 densities in the rural area "because these rural densities already comply with the Growth
20 Management Act." Respondent's Prehearing Brief at 8. The County references its criteria
21 for higher density rural zones and asserts that these criteria reflect local circumstances and
22 pre-existing development. *Ibid* at 10-11. The County asserts that new or expanded areas
23 of this zoning will not be allowed and no new areas will be designated for these densities
24 without going through a LAMIRD designation process. *Ibid* at 8-9.
25
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27 **Board Analysis**

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30 ² The Petitioner's brief was submitted on April 27, 2005 before the Board had ruled that the League of Women
31 Voters of Thurston County could not be added as an additional petitioner. Order Denying Leave to File
32 Motion, May 16, 2005.

1 We first note that the update provisions of RCW 36.70A.130 require the County to review its
2 comprehensive plan and development regulations to ensure that they comply with the GMA:

3 A county or city shall take legislative action to review and, if needed, revise its
4 comprehensive land use plan and development regulations to ensure the plan and
5 regulations comply with the requirements of this chapter according to the time
6 periods specified in subsection (4) of this section.

7 RCW 36.70A.130(1) (in pertinent part)

8 This requirement imposes a duty upon the County to bring its plan and development
9 regulations into compliance with the GMA, including any changes in the GMA enacted since
10 the County's adoption of its comprehensive plan and development regulations. While some
11 provisions of the County's plan and development regulations may not have been subjected
12 to timely challenge when originally adopted, a challenge to the legislative review required by
13 RCW 36.70A.130(1) and (4) opens those matters that were raised by Petitioner in the
14 update review process. See RCW 36.70A.280(2). It is not, therefore, sufficient for the
15 County to assert that its provisions regarding rural densities have not been changed; those
16 provisions must themselves comply with the GMA.
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19 As Petitioner points out, densities that are no more than one dwelling unit per five acres are
20 generally considered "rural" under the GMA. *Durland v. San Juan County*, WWGMHB Case
21 No. 00-2-0062c (Final Decision and Order, May 7, 2001); *Sky Valley v. King County*,
22 CPSGMHB Case No. 95-3-0068c (Final Decision and Order, March 12, 1996); *Yanisch v.*
23 *Lewis County*, WWGMHB Case No. 02-2-0007c (Final Decision and Order, December 11,
24 2002); but see *Vashon-Maury v. King County*, CPSGMHB Case No. 95-3-0008c (Final
25 Decision and Order, October 23, 1995); and *City of Moses Lake v. Grant County*, EWGMHB
26 Case No. 99-1-0016 (Final Decision and Order, May 23, 2000) (holding that rural densities
27 should be no greater than one dwelling unit per *ten* acres). Densities that are not urban but
28 are greater than one dwelling unit per five acres are generally deemed to promote sprawl in
29 violation of goal 2 of the GMA. RCW 36.70A.020(2).
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1 The County does not argue that rural residential densities in excess of one dwelling per five
2 acres comply with the GMA. Instead, the County argues that its areas of higher rural
3 densities are compliant because they existed before the enactment of the GMA and contain
4 the areas where more intensive rural residential uses exist. Respondent's Prehearing Brief
5 at 10. Prior to the adoption of RCW 36.70A.070(5)(d) in 1997, there had been no legislative
6 guidance on how communities should deal with existing development in the rural areas that
7 was already more intensive than a rural level of development. When the County adopted its
8 comprehensive plan in 1995, it developed its own criteria for determining how to contain
9 such areas of more intensive development in the rural areas. In 1997, the legislature
10 adopted the provisions of RCW 36.70A.070(d) that set the requirements for "limited areas of
11 more intensive rural development" (LAMIRDs). ESB 6094 (1997). Now that there is
12 direction in the GMA on how to address areas of more intensive rural development, the
13 County's update must ensure that it complies with those terms. See *Futurewise v.*
14 *Whatcom County*, WWGMHB Case No. 05-2-0013 (Order on Dispositive Motions, June 15,
15 2005).

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19 While the County's brief asserts that its areas of higher rural residential densities "existed
20 prior to the enactment of the Growth Management Act in 1990," the County does not argue
21 that its areas of higher rural residential densities comply with the requirements of RCW
22 36.70A.070(5)(d). The findings in Resolution 13234 similarly indicate that these areas are
23 not designations of limited areas of more intensive rural development (LAMIRDs).
24

25 Residential LAMIRDs are addressed in RCW 36.70A.070(5)(d)(i):³

26 Rural development consisting of the infill, development or redevelopment of existing
27 commercial, industrial, residential, or mixed-use areas, whether characterized as
28 shoreline development, villages, hamlets, rural activity centers, or crossroads
29 developments.

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32 ³ The other two types of LAMIRDs are recreational and tourist areas (RCW 36.70A.070(5)(d)(ii)) and small
business and cottage industry areas (RCW 36.70A.070(5)(d)(iii)) – both non-residential LAMIRDs.

1 To comply with RCW 36.70A.070(5)(d)(i), there must be a determination of the “built
2 environment” as of July 1, 1990, (the date applicable to Thurston County)⁴ upon which the
3 establishment of logical outer boundaries for limited areas of more intensive rural
4 development (LAMIRDs) are based. RCW 36.70A.070(5)(d)(iv). Residential LAMIRDs
5 must be created within logical outer boundaries that contain the existing development, and
6 they may include only limited undeveloped lands that fit within those logical outer
7 boundaries:
8

9 A county shall adopt measures to minimize and contain the existing areas or uses of
10 more intensive rural development, as appropriate, authorized under this subsection.
11 Lands included in such existing areas or uses shall not extend beyond the logical
12 outer boundary of the existing area or use, thereby allowing a new pattern of low-
13 density sprawl. Existing areas are those that are clearly identifiable and contained
14 and where there is a logical boundary delineated predominately by the built
15 environment, but that may also include undeveloped lands if limited as provided in
16 this subsection. The county shall establish the logical outer boundary of an area of
17 more intensive rural development. In establishing the logical outer boundary the
18 county shall address (A) the need to preserve the character of existing natural
19 neighborhoods and communities, (B) physical boundaries such as bodies of water,
20 streets and highways, and land forms and contours, (C) the prevention of abnormally
21 irregular boundaries, and (D) the ability to provide public facilities and public services
22 in a manner that does not permit low-density sprawl.

23 RCW 36.70A.070(5)(d)(iv).

24 The Thurston County Comprehensive Plan Land Use Element contains a discussion of rural
25 area designations. CP at 2-17 – 2-27. This discussion includes the criteria for inclusion in
26 any of the rural area designations, including the higher density residential designations. CP
27 at 2-24 – 2-27. None of the criteria include a review of the existence of development as of
28 July 1, 1990, nor do they establish logical outer boundaries with reference to the statutory
29 criteria. *Ibid.*
30

31 ⁴ Existing development, for purposes of creating the logical outer boundaries of a LAMIRD, is that which was
32 in existence on July 1, 1990. RCW 36.70A.070(5)(d)(v)(A).

1 The County's comprehensive plan policies reflect the County's intention to only apply the
2 statutory LAMIRD criteria to areas which have not yet been designated for high density rural
3 residential development, or when the existing high density rural areas are expanded:

4 One dwelling unit per five acres should be the common, minimum residential density
5 level in rural areas, except in areas already dominated by higher density
6 development.

7 Housing and Residential Densities Policy 1, CP at 2-46

8
9 Thus, this policy assumes that existing high density rural residential zones need not be
10 designated as LAMIRDs. Similarly, another comprehensive plan policy addresses existing
11 rural residential designations and provides that they may not expand unless they are
12 designated as LAMIRDs:

13 Thurston County should not expand or intensify rural residential land use
14 designations or zoning districts with densities greater than 1 unit per 5 acres unless
15 these areas are designated as a limited area of more intensive rural development
16 (LAMIRD) as defined in the GMA.

17 Housing and Residential Densities Policy 2, CP at 2-46

18 Again, this policy accepts existing high density rural residential areas without further
19 determination that they comply with the statutory LAMIRD criteria, and even discusses the
20 potential to expand LAMIRDs once they have been designated with logical outer
21 boundaries.
22

23
24 Rural Land Use and Activities Policy 8 (CP at 2-43-44) sets criteria for designation and
25 expansion of "commercial centers" which do not incorporate the requirements of RCW
26 36.70A.070(5)(d):

27 Rural commercial centers should be designated only for identified rural community
28 areas, like Rochester and Steamboat Island Road at Highway 101. These centers
29 should serve a larger rural community than neighborhood convenience and have a
30 greater variety of uses, while maintaining a rural character. Expansion of a
31 Commercial Center should only be considered if it will result in a more "logical outer
32 boundary", as defined in 36.70A.070(5) of the Growth Management Act, and if it is
needed to accommodate population growth in the rural community served...

CP 2-43 – 2-44 (in part)

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2 As is true of the other policies, this policy only applies the LAMIRD criteria of RCW
3 36.70A.070(5)(d) in the event of “expansion” of an area of more intense rural development.
4 Rural Land Use and Activities Policy 8 does not accurately incorporate the statutory criteria
5 for LAMIRDs; logical outer boundaries may not be based on accommodating population
6 growth. RCW 36.70A.070(5)(d)(i) and (iv).
7

8
9 The policies with respect to more intensive rural development are further elaborated in the
10 zoning code as development regulations. Thurston County’s zoning code contains
11 development regulations setting residential density levels in excess of one dwelling unit per
12 five acres in rural areas: Rural Residential – One Dwelling Unit per Two Acres (RR 1/2)
13 (T.C.C. Ch. 20.10); Rural Residential – One Dwelling Unit per Acre (RR 1/1) (T.C.C. Ch.
14 20.11); Rural Residential – Two Dwelling Units per Acre (RR 2/1) (T.C.C. Chapter 20.13);
15 and Suburban Residential – Four Dwelling Units per Acre (SR 4/1) (T.C.C. Chapter 20.14).
16 Index No. 64. These development regulations also fail to comply with the GMA because
17 they do not incorporate the statutory criteria for LAMIRDs. All of these residential density
18 levels constitute “more intensive rural development” within the meaning of RCW
19 36.70A.070(5)(d). If the County intends to allow them, they must conform to the statutory
20 requirements for residential LAMIRDs. RCW 36.70A.070(5)(d)(i).
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24 Petitioner also argues that even the Rural Residential – One Dwelling Unit per Five Acres
25 (RR 1/5) zone exceeds a rural residential density level of one dwelling unit per five acres.
26 Petitioners Futurewise’s and League of Women Voters of Thurston County Prehearing Brief
27 at 9. Petitioner points to T.C.C. 20.09.040(1)(a) to argue that the effective density for this
28 zone is actually a net minimum lot size of four acres for single family residences and eight
29 acres for duplexes. *Ibid.*
30
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32

1 The cited zoning code provision, T.C.C. 20.09.040(1)(a), establishes a minimum lot size in
2 the RR 1/5 zone as follows: "Conventional subdivision lot (net) – four acres for single
3 family, eight acres for duplexes." The County does not contest that this development
4 regulation allows one single family dwelling unit per four acres, rather than one dwelling unit
5 per five acres, in the RR 1/5 zone.
6

7
8 This provision is of even greater concern because RR 1/5 is the *least* dense of the County's
9 rural residential designations. The determination of proper rural density levels depends in
10 large measure upon the GMA's strictures against promotion of sprawl. 48.3 percent of the
11 County's rural residential areas fall into the RR 1/5 category. CP Table 2-1A at 2-18 – 2-19.
12 With such a large portion of the County's rural area designated as RR 1/5, the net density
13 level of one dwelling unit per four acres in the RR 1/5 zone increases the "conversion of
14 undeveloped land into sprawling, low-density development in the rural area," in
15 contravention of RCW 36.70A.070(5)(c)(iii).
16

17
18 **Conclusion:** The County's high density rural residential designations (SR – 4/1; RR 2/1;
19 RR 1/1; and RR 1/2); Housing and Residential Densities Policies 1 and 2, and Rural Land
20 Use and Activities Policy 8; and the County's development regulations implementing these
21 designations (T.C.C. Ch. 20.10; T.C.C. Ch. 20.11; T.C.C. Chapter 20.13; and T.C.C.
22 Chapter 20.14) fail to comply with RCW 36.70A.070(5). The residential density levels
23 allowed in these designations are too intensive for rural areas unless they are designated as
24 limited areas of more intensive rural development (LAMIRDs) pursuant to RCW
25 36.70A.070(5)(d). If the County is to allow such areas of more intensive rural development,
26 it must establish them in accordance with RCW 36.70A.070(5)(d). T.C.C. 20.09.040(1)(a)
27 also fails to comply with RCW 36.70A.070(5)(c) and (d) by effectively increasing the rural
28 residential density in the RR 1/5 zone from one dwelling unit per five acres to one single-
29 family dwelling unit per four acres.
30
31
32

1 **Issue No. 2: Does the adoption of Resolution 13234 and Ordinance 13235 fail to**
2 **comply with RCW 36.70A.070 and RCW 36.70A.130 when they fail to provide for a**
3 **variety of rural densities, providing instead that the only GMA compliant rural**
4 **designations allow a uniform one unit per five acres?**

5 **Positions of the Parties**

6 Petitioner argues that the County's comprehensive plan fails to provide a variety of rural
7 densities as required by RCW 36.70A.070(5)(b). Petitioners Futurewise's and League of
8 Women Voters of Thurston County Prehearing Brief at 14. Petitioner claims that only two of
9 the rural area designations in the County's plan require densities of no more than one
10 dwelling unit per five acres - the Rural Residential Resource zone and the McAllister
11 Geologically Sensitive Area District. *Ibid* at 15.

12
13
14 The County responds that it provides densities of one dwelling unit per twenty acres, one to
15 forty and one to eight in non-urban zones. Respondent's Prehearing Brief at 14. The
16 County also cites to its provisions for the transfer of development rights, its open space tax
17 program, private conservation easements and public wildlife refuges and open spaces, and
18 parks. *Ibid* at 14-15.

19
20
21 **Board Analysis**

22 The GMA expressly requires "a variety of rural densities" in the rural element of the
23 comprehensive plan:

24 The rural element shall permit rural development, forestry, and agriculture in rural
25 areas. The rural element shall provide for a variety of rural densities, uses, essential
26 public facilities, and rural governmental services needed to serve the permitted
27 densities and uses. To achieve a variety of rural densities and uses, counties may
28 provide for clustering, density transfer, design guidelines, conservation easements,
29 and other innovative techniques that will accommodate rural densities and uses that
30 are not characterized by urban growth and that are consistent with rural character.

31 RCW 36.70A.070(5)(b)

32 The County concedes that it does predominately provide densities of one dwelling unit per
five acres in the rural zone. Respondent's Prehearing Brief at 14. However, the County
asserts that it has other designations that are less dense than one in five. *Ibid*. The

1 densities that the County cites as being less intense than one dwelling unit per five acres
2 include designations of natural resource lands. T.C.C. Chapter 20.08A applies to lands in
3 the long-term agricultural district; Ch. T.C.C.20.08D applies to lands in the long-term forestry
4 district; and T.C.C. Chapter 20.62 creates a program for transfer of development rights in
5 long-term commercially significant agricultural lands. Rural lands are lands “not designated
6 for urban growth, agriculture, forest, or mineral resources.” RCW 36.70A.070(5). Thus, the
7 designations of low-intensity resource lands do not create a variety of *rural* densities.
8

9
10 Rural densities, as we have discussed above, are generally no more intense than one
11 dwelling unit per five acres. The County has designated and zoned a variety of rural areas
12 with residential densities higher than this rural level: Residential – One Unit per Two Acres;
13 Residential – One Unit per One Acre; Residential – Two Units per One Acre; and
14 Residential – Four Units per Acre. The RR 1/5 zone, although stating that it limits
15 development density to one dwelling unit per five acres, has a net density of one single
16 family dwelling unit per four acres. T.C.C. 20.09.040(1)(a). None of these densities are
17 rural in nature and therefore cannot be used to establish a variety of rural densities.
18

19
20 The GMA allows a county to achieve a variety of rural densities through innovative
21 techniques. RCW 36.70A.070(5)(b). However, where the rural designations and zones
22 themselves do not include a variety of rural densities, the comprehensive plan and
23 development regulations must demonstrate how the “innovative techniques” create such
24 varieties of densities in the rural area. The County argues that its natural shoreline
25 environment residential zone limits densities to a minimum lot area of ten acres.
26 Respondent’s Prehearing Brief at 12. However, it is not clear how or even if this zone
27 affects rural densities.⁵ A similar problem exists with its “clustering ordinance.” *Ibid* at 14.
28 The County asserts that it “owns and funds conservation easements” but does so in the
29
30
31

32

⁵ Although the County references exhibits in its brief, the exhibits provided to the Board are not tabbed and an order cannot be discerned. In some instances, it does not appear that the Board has actually been provided
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Case No. 05-2-0002
July 20, 2005
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Western Washington
Growth Management Hearings Board
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1 same sentence in which it refers to its transfer of development rights program, which applies
2 to agricultural lands rather than rural lands. *Ibid.* The Board is therefore unable to find that
3 the County has achieved a variety of rural densities and uses through innovative
4 techniques.

5
6
7 **Conclusion:** The County's comprehensive plan and development regulations fail to provide
8 for a variety of rural densities as required by RCW 36.70A.070(5)(b).

9
10 **Issue No. 3: Does the adoption of Resolution 13234 and Ordinance 13235 fail to**
11 **comply with RCW 36.70A.020(1), RCW 36.70A.020(2), RCW 36.70A.110 and RCW**
12 **36.70A.130 when the ordinances establish urban growth areas that substantially**
13 **exceed the capacity necessary to accommodate the Washington Office of**
14 **Financial Management population forecast adopted by the County, even assuming**
15 **a 25 percent market factor? This issue includes UGAs that preexisted these**
16 **ordinances that were too large and a UGA expansion effected by these**
17 **ordinances.**

18 **Positions of the Parties**

19 Petitioner argues that the County's urban growth areas (UGAs) are 62 percent larger than
20 necessary to accommodate the County's growth target. Petitioners Futurewise's and
21 League of Women Voters of Thurston County Prehearing Brief at 16. This, Petitioner
22 argues, is well beyond the 25 percent market factor allowed under the GMA. *Ibid* at 17.
23 Petitioner argues that urban growth areas must be sized to accommodate the OFM
24 population projection chosen by the County and may not be "over-sized" without creating
25 sprawling growth. *Ibid* at 19. Petitioner also argues that the County's Urban Growth Area
26 Policy 8 (allowing expansion of urban growth areas if there is an overriding benefit to the
27 public health, safety, and welfare) fails to comply with the GMA. *Ibid.*

28
29
30
31
32 the cited exhibit. If an exhibit has not been provided, it cannot be considered by the Board and thus will not be
part of the record. It would also aid the Board if the exhibits were clearly marked and organized for reference.

1 The County responds that it has worked with the cities and towns of Thurston County to
2 properly accommodate projected growth. Respondent's Prehearing Brief at 16-18. The
3 County disputes Petitioner's contention that its UGAs are 62 percent larger than needed to
4 accommodate projected growth; the County argues that it has allowed for 38 percent
5 excess capacity in its UGAs. *Ibid* at 20. The County argues that this is a statutorily
6 permissible market factor and a 38 percent market factor is not excessive. *Ibid*. The
7 County also argues that the Tenino UGA was actually reduced in size; and the Bucoda UGA
8 was expanded to deal with potential contamination of its aquifer. *Ibid* at 19-20.
9

10
11 Intervenor argues in support of the Tenino UGA expansion to include Intervenor's property.
12 Intervenor's Brief. Intervenor argues that Tenino changed but did not increase its UGA size
13 and that adding the Intervenor's property to the UGA will enable development needed to
14 support a planned sewer facility. Intervenor's Brief at 3-4. Intervenor also challenges the
15 sufficiency of the Petitioner's standing in this case because Petitioner did not participate in
16 the City of Tenino's adoption of its UGA. *Ibid* at 5-8. (See footnote 8.)
17
18

19 **Board Analysis**

20 The requirements for creating and sizing a UGA are set out in RCW 36.70A.110. This
21 section of the statute provides that UGAs must include areas and densities sufficient to
22 accommodate the 20-year population projections by the Office of Financial Management
23 (OFM):
24

25 Based upon the growth management population projections made for the county by
26 the office of financial management, the county and each city within the county shall
27 include areas and densities sufficient to permit the urban growth that is projected to
28 occur in the county or city for the succeeding twenty-year period, except for those
29 urban growth areas contained totally within a national historical reserve... An urban
30 growth area determination may include a reasonable land market supply factor and
31 shall permit a range of urban densities and uses. In determining this market factor,
32 cities and counties may consider local circumstances. Cities and counties have
discretion in their comprehensive plans to make many choices about accommodating
growth.

RCW 36.70A.110(2) (in pertinent part)

1
2 RCW 36.70A.110(2) provides that county UGAs shall include areas and densities sufficient
3 to permit the urban growth projected for the county by OFM. RCW 36.70A.110(2). This
4 provision has been interpreted to also limit the size of UGAs as well as to ensure that the
5 UGA boundaries are sufficient to accommodate projected growth, in light of the anti-sprawl
6 goal of the GMA. *Diehl v. Mason County*, 94 Wn.App. 645, 982 P.2d 543 (Div. II, 1999).
7 "... [T]he OFM projection places a cap on the amount of land a county may allocate to
8 UGAs." *Ibid* at 654. Thus, RCW 36.70A.110 requires that the UGAs be created to
9 accommodate the OFM population projection for the 20-year planning horizon and also
10 limits the size of UGAs to those lands needed to accommodate the urban population
11 projection utilized by the county.
12
13

14
15 In this case, the County has chosen a 2025 total population forecast figure of 334,261. CP
16 Table 2-1 at 2-12. The population forecast chosen was adopted in 1999 as a regional
17 forecast (Population and Employment Forecast for Thurston County, Final Report, October
18 1999, Index No. 208) and then compared to the OFM population projections for the County
19 in 2002. Buildable Lands Report for Thurston County, Technical Documentation, at 46
20 (Submitted post-hearing, Index No. 43). The medium scenario regional forecast was found
21 to fall within one percent of the new state medium range forecast (OFM's projection) and
22 was therefore adopted for use in the Buildable Lands Report and, subsequently, the 2004
23 comprehensive plan update. *Ibid.*; Thurston County Comprehensive Plan (CP), Facts
24 Section and Land Use Chapter Table 2-1 at 2-11 – 2-12. That population forecast, in turn,
25 was used to determine demand for land within the UGAs through 2025. Thurston County
26 Comprehensive Plan (CP), Facts Section and Land Use Chapter Table 2-1 at 2-11 – 2-12.
27 We note first that the Buildable Lands Report for Thurston County is an impressive and
28 thorough analysis of land supply and demand in Thurston County. The land demand
29 analysis in that report is well-supported and clearly explained. The County's choice to rely
30
31
32

1 upon the land supply and demand analysis in the Buildable Lands Report for planning in the
2 2004 comprehensive plan update is a sound one.

3
4 Petitioner does not fault the population forecast chosen by the County or claim that the land
5 supply projections are not compatible with the population projections provided by OFM.

6 Instead, Petitioner focuses on the amount of land included in the County's UGAs and
7 compares it to the projected demand for urban land. Petitioners Futurewise's and League
8 of Women Voters of Thurston County Prehearing Brief at 31. The County's comprehensive
9 plan acknowledges that in the urban area "approximately 38% of available residential land
10 in 2000 will remain in the year 2025, assuming the county experiences growth consistent
11 with state and regional forecasts, and zoning remains consistent." CP footnote 6 at 2-11.
12 On its face, then, the County's UGAs provide a significantly greater amount of land for
13 residential urban development than is likely to be needed to accommodate the projected
14 population growth allocated by the County to UGAs.
15
16

17
18 The County responds that the disparity is due to a market factor. Respondent's Prehearing
19 Brief at 22.⁶ Petitioner argues that supply exceeds demand for residential land in the UGAs
20 by 62 percent, which is excessive even if it were a market factor. Petitioners Futurewise's
21 and League of Women Voters of Thurston County Prehearing Brief at 31. The County
22 responds that the "7,207 acres is the unconsumed land left in 2025 which is thirty-eight
23 percent (38%) of the total land supply of 18,799 acres." Respondent's Prehearing Brief at
24 20. A 38 percent market factor, according to the County, is not clearly erroneous in light of
25 the uncertainties about how much future land will be needed for growth in the cities and
26 towns of Thurston County. *Ibid* at 22.
27
28

29
30
31 ⁶ Since a market factor is used to increase the available land supply, it should be applied to the 2025 land
32 demand figure. As an example, if the projected land demand is 100 acres, a 25 percent market factor would
increase the needed land supply to 125 acres.

1 The use of a "land market supply factor" is permissible under the statute to account for the
2 vagaries of the real estate market supply. RCW 36.70A.110(2). The Central Puget Sound
3 Growth Management Hearings Board describes the market factor as follows:

4 In general, it accounts for the fact that not all vacant land will be built or all
5 redevelopable property redeveloped, because the property owners simply will not
6 take the necessary actions during the planning period.

7 *City of Gig Harbor, et al. v. Pierce County*, CPSGMHB Case No. 95-3-0016c (Final Decision
8 and Order, October 31, 1995)

9 The first problem with the County's response is that nowhere in the County's comprehensive
10 plan is it indicated that a 38 percent market factor was utilized to increase the amount of
11 acreage that is needed to accommodate projected urban residential growth. While the
12 comprehensive plan acknowledges that 38 percent of urban residential land will remain
13 unconsumed in 2025, it does not claim that the reason for this was a market factor. CP
14 footnote 6 at 2-11.

15
16
17 At argument, the County claimed that the 38 percent market factor was based on overlays
18 of critical areas and shorelines. However, the Buildable Lands Report already accounted
19 for critical areas deductions:

20
21 Critical area and right-of-way exclusions can reduce net density in significant
22 amounts taken across all zoning districts as a whole, (note the difference in
23 deduction of those jurisdictions including all critical areas and rights-of-way versus
24 those that are much more selective, Table 12). In real terms, however, these
25 deductions play a relatively small role in the difference between net density
26 calculations once a parcel has been through the platting process. In addition, many
27 jurisdictions further protect critical areas from all development pressure by placing
28 them into Open Space or Institutional zoning categories. Overall, critical areas
29 deductions to net density, as applied by various jurisdictions, were found to comprise
30 less than one percent of those parcels developed between 1996 and 2000 in
31 residential and mixed use zoning categories.

32 Building Lands Report, Technical Documentation, (Index No. 43) at 35.

In fact, the disparity between land supply and demand in the urban areas does not appear
to be the result of a market factor at all, but appears instead to be an unavoidable
consequence of the urban growth boundaries chosen by the County.

1
2 The second problem with the County's assertion that the disparity between residential land
3 supply and projected demand is a result of a market factor is that there is no analysis
4 demonstrating the reason for the market factor. "Although a county may enlarge a UGA to
5 account for a 'reasonable land market supply factor,' it must also explain why this market
6 factor is required and how it was reached." *Diehl v. Mason County*, 95 Wn. App. 645, 654,
7 982 P.2d 543 (Div. II, 1999).
8

9
10 The land supply analysis performed in the Buildable Lands Report concluded that the
11 supply of residential land as of 2000 for urban Thurston County will exceed demand for
12 urban residential land in 2025; it found a supply of 18,789 acres and a 2025 demand of 11,
13 582 acres. Buildable Lands Report for Thurston County, September 2002. (Index No. 43),
14 Figure II-1 at II-4. The 2004 update of the comprehensive plan accepts and utilizes these
15 figures for residential land supply and demand in urban areas. Thurston County
16 Comprehensive Plan (CP), Facts Section and Land Use Chapter Table 2-1 at 2-11 – 2-12.
17
18 However, there is no explanation in the comprehensive plan for the use of a market factor,
19 perhaps because the buildable lands analysis appears to already account for many of the
20 market vagaries in its own assessment of land availability. The buildable lands analysis
21 provides an individualized look at the available land (generally on a parcel-by-parcel basis)
22 and produces a figure for net developable land based on development assumptions
23 established in light of the actual development trends in the area of the lands assessed.
24 Buildable Lands Report for Thurston County, September 2002. (Index No. 43). The
25 analysis includes a review of subdivision trends from 1995 to 1999 and residential building
26 permits from 1996 to 2000. Buildable Lands Report for Thurston County at 32-33.
27 Development assumptions were derived based on current comprehensive plans and
28 development codes, recent development trends and information provided by long-range
29 planners from jurisdictions throughout the County. *Ibid* at II – 10. The buildable lands
30 analysis assesses many of the potential market factors and incorporates them into the
31
32

1 figures for land supply and demand that it produces. This analysis appears to take the
2 place of a market factor.

3
4 Since the number used in the comprehensive plan update to determine residential land
5 supply in the Thurston County urban growth areas was derived from the buildable lands
6 analysis, any market factor must be based on factors that were not already incorporated into
7 the determination of residential land supply.
8

9
10 Petitioners also challenge the expansion of two UGAs – the Tenino UGA and the Bucoda
11 UGA. Petitioners Futurewise's and League of Women Voters of Thurston County
12 Prehearing Brief at 17 – 18. Citing to Table 2-1 of the County's comprehensive plan,
13 Petitioner points out that the 2025 residential land demand for the Bucoda UGA is 30 acres
14 and the corresponding land supply is 81 acres. *Ibid.* Tenino's residential land demand in
15 2025 is projected to be 353 acres with a corresponding land supply of 505 acres. *Ibid.*
16 Petitioner further asserts that the County's Urban Growth Area Policy 8 (allowing expansion
17 of urban growth areas if there is an overriding benefit to the public health, safety, and
18 welfare) fails to comply with the GMA.
19
20

21
22 The County responds that land was taken out of, as well as added to, the Tenino UGA so
23 that the Tenino UGA was actually reduced by 6 acres. Respondent's Prehearing Brief at
24 19. The Intervenor points out that the addition of its property to the UGA is necessary to
25 finance a new sewer facility that will allow the City to encourage more intense urban
26 development than can now be adequately served with urban levels of governmental
27 services. Intervenor's Brief at 2-3.⁷ This will allow truly urban density levels of residential
28

29
30
31 ⁷ Intervenor also challenges Petitioner's standing to raise challenges to the Tenino UGA because Petitioner did
32 not participate in the City's process in developing its comprehensive plan. However, Petitioner is not
challenging the City's adoption of its plan but rather the County's adoption of UGA boundaries. Adoption of
urban growth area boundaries is the responsibility of the County. RCW 36.70A.110. Petitioner participated in
the County's process in adopting those boundaries and raised its concerns at that time. RCW

1 development within the City limits. As to the Bucoda UGA, the County argues that
2 expansion of its boundaries adds sufficient developable lands for projected residential
3 growth if sewer becomes available, and reduces pressure on the existing aquifer from
4 residential development based on septic systems. Respondent's Prehearing Brief at 19-20.
5

6
7 However, the fundamental problem identified by Petitioner is that the UGAs are much larger
8 than the growth projected to be accommodated in them. It may well be, as Intervenor
9 argues, that there are good reasons for increasing the size of the Tenino UGA. However, if
10 the County does this, it must "show its work"⁸ on the reasons for the expansion and also
11 increase its allocated population growth to the Tenino UGA and adjust its population
12 allocations elsewhere in the County's UGAs accordingly. Similarly, it may be reasonable for
13 the County to adjust the Bucoda UGA boundaries to accommodate additional growth in that
14 UGA (if that urban growth is provided with urban levels of services). However, if it does so,
15 the County must "show its work," allocate additional population growth to the Bucoda UGA,
16 and account for that re-allocation in the other land use designations in the county. The
17 OFM population allocation to the county is the basis upon which the UGAs may be sized;
18 the population growth allocations to each UGA must add up to comport with the overall
19 county urban growth population allocation.
20
21

22
23 Urban Growth Area Policy 8(b) (CP at 2-50) provides for expansion of UGA boundaries for
24 reasons other than accommodation of projected urban population growth:

25 There can be shown an overriding public benefit to public health, safety and welfare
26 by moving the urban growth boundary.
27 Urban Growth Area Policy 8(b), CP at 2-50.
28

29 36.70A.280(2)(b). Since the adoptions being challenged are the County's resolution and ordinance, Petitioner
30 has standing to bring this appeal.

31 ⁸ *Berschauer v. Tumwater*, WWGMHB Case No. 94-2-0002 (Final Decision and Order, July 27, 1994);
32 *Association of Rural Residents v. Kitsap County*, CPSGMHB Case No. 93-1-0010 (Final Decision and Order,
June 3, 1994).

1
2 This policy appears to confuse expansion of UGA boundaries with extension of urban levels
3 of service. Under RCW 36.70A.110(4), urban governmental services may not be extended
4 to rural areas "except in those limited circumstances shown to be necessary to protect basic
5 public health and safety and the environment and when such services are financially
6 supportable at rural densities and do not permit urban development." However, this
7 exception does not apply to the extension of UGA boundaries. UGA boundaries are to be
8 set to accommodate projected urban population growth (RCW 36.70A.110(2)) and to
9 contain such urban growth. RCW 36.70A.110(1). Urban Growth Area Policy 8(b) allows the
10 extension of urban growth in violation of these provisions of the GMA and its anti-sprawl
11 goal, RCW 36.70A.020(2).
12
13

14
15 **Conclusion:** The size of any UGA must be based upon the projected population growth
16 allocated to that UGA. Since the supply of urban residential lands (18,789 acres)
17 significantly exceeds the projected demand for such lands over the course of the 20-year
18 planning horizon (11,582 acres), the County's UGAs fail to comply with RCW 36.70A.110.
19 For the Tenino and Bucoda UGAs, the population projection allocations and the 2025 land
20 demand figures based on them are not consistent with the land supply for those urban
21 growth areas. This also fails to comply with RCW 36.70A.110.
22
23

24 ***Issue No. 4: Does the adoption of Resolution 13234 and Ordinance 13235 fail***
25 ***to comply with RCW 36.70A.020(8), RCW 36.70A.060, RCW 36.70A.170, RCW***
26 ***36.70A.050 and RCW 36.70A.130 when they fail to designate and conserve***
27 ***hundreds of acres of land that meet the GMA criteria for agricultural lands of***
28 ***long term commercial significance?***

29 Petitioner argues that Thurston County's designation criteria are internally inconsistent
30 because the land capability classification system and prime farmland are not the same
31 systems, yet Thurston County's designation criterion mixes them all together and ultimately
32 relies on prime farmland. Petitioners Futurewise's and League of Women Voters of
Thurston County Prehearing Brief at 22-23. Petitioner also argues that County's criteria for

1 designation of agricultural lands of long-term commercial significance are erroneous for
2 three reasons: they fail to consider farmlands of statewide importance; they require that land
3 actually be used for agriculture; and they require a predominant parcel size of 20 acres.
4 *Ibid* at 24 – 29.⁹

6
7 The County responds that the Petitioner has not shown that the County's criteria for
8 designation of agricultural lands of long-term commercial significance are clearly
9 erroneous.¹⁰

11 The County's designation criteria for agricultural lands of long-term commercial significance
12 are found at Chapter Three – Natural Resources, pp. 3-3 – 3-7 of the County's
13 comprehensive plan. The County's comprehensive plan also states that almost 15 percent
14 of land in the county is used for local agriculture. *Ibid* at 3-1.

16
17 As a first step towards designating natural resource lands, the Minimum Guidelines to
18 Classify Agriculture, Forest, Mineral Lands and Critical Areas (Ch. 365-190 WAC)
19 ("Minimum Guidelines" hereafter) call for classification of natural resource land categories.
20 WAC 365-190-040(1). WAC 365-190-050 directs counties and cities to use the land-
21 capability classification system of the United States Department of Agriculture Soil
22 Conservation Service as defined in Agriculture Handbook No. 210.¹¹ The Petitioner faults
23 the County's classification of soils for inconsistency with the Agriculture Handbook No. 210.

25
26 ⁹At the hearing on the merits, Petitioner abandoned its argument that the County erred in using an out-dated
27 list of prime farmland soils, conceding that the list was not provided to the County in sufficient time to be
included in its 2004 update.

28 ¹⁰ The County devoted most of its argument in its Prehearing Brief to the Petitioner's claim that the County
29 should have included the newest list of prime farmland soils in its 2004 update. That claim was later
abandoned.

30
31 ¹¹ Although couched in mandatory terms, the Minimum Guidelines call for counties to "consider" the minimum
32 guidelines. WAC 365-190-040(2)(b)(ii).

1 However, Petitioner's very abbreviated argument simply does not demonstrate how the
2 County's classification system fails to follow Agriculture Handbook No. 210.

3
4 Petitioner also faults the County for failing to consider farmlands of statewide importance in
5 its classification scheme. For this argument, Petitioner relies upon the holding of the
6 Eastern Washington Growth Management Hearings Board in *Williams, et al. v. Kittitas*
7 *County*, EWGMHB Case No. 95-1-0009 (Order of Noncompliance, November 6, 1998).
8 However, in that decision, the Eastern Board did not hold that farmlands of statewide
9 importance must be considered in establishing a classification scheme. Again, Petitioner
10 has failed to meet its burden of proof on this point.
11

12
13 On the other hand, Petitioner points to two of the County's criteria for designation of
14 agricultural lands of long-term commercial significance that do not comply with the Growth
15 Management Act's directives to designate and conserve agricultural resource lands. RCW
16 36.70A.040 and 36.70A.170. The first is the requirement in Chapter 3 of the County
17 comprehensive plan that "Designated agricultural lands should include only areas that are
18 used for agriculture." Thurston County Comprehensive Plan, Chapter Three – Natural
19 Resource Lands, p. 3-4. Lands otherwise eligible for designation as agricultural lands of
20 long-term commercial significance may not be excluded simply on the basis of current use.
21 Our State Supreme Court has ruled on this point:
22

23
24 One cannot credibly maintain that interpreting the definition of "agricultural land" in a
25 way that allows land owners to control its designation gives effect to the Legislature's
26 intent to maintain, enhance, and conserve such land. . . We hold land is "devoted to"
27 agricultural use under RCW 36.70A.030 if it is in an area where the land is actually
28 used or capable of being used for agricultural production.
29 *City of Redmond v. Central Puget Sound Growth Management Hearings Board*, 136 Wn.2d
30 38, 53, 959 P.2d 1091, 1998 Wash. LEXIS 575 (1998).

31 Therefore, agricultural lands designation criterion number three does not comply with the
32 GMA definitions of agricultural lands. RCW 36.70A.030(2) and (10).

1 The second designation criterion that fails to comply with the GMA is criteria number 5,
2 which requires that the predominant parcel size must be 20 acres or more. Thurston
3 County Comprehensive Plan, Chapter Three – Natural Resource Lands, p. 3-4. The
4 comprehensive plan explains that the reason for this parcel size limitation is it “provides
5 economic conditions sufficient for managing agriculture lands for long-term commercial
6 production.” *Ibid.* However, as Petitioner points out (and as the Eastern Board found in the
7 Kittitas County case cited above) parcel size does not necessarily correlate to the size of a
8 farm. Farms may consist of several parcels in common ownership or use (under lease for
9 example), thus achieving the economies of scale the County appears to rely upon in
10 restricting smaller farms from designation and conservation. While parcel size may be a
11 factor in determining the possibility of more intense uses of the land, it is just one in many
12 factors to consider on the question of the possibility of more intense uses of the land. WAC
13 365-190-050(e). Parcel size is not determinative of the size of a farm, which may consist of
14 more than one parcel.
15
16

17
18 Parcel size itself does not correspond to farm size because it is not indicative of the amount
19 of acreage that would be farmed together. Using predominant parcel size of 20 acres as a
20 designation criterion may exclude viable farms in which the total acreage farmed is in
21 excess of 20 acres in size but each of the parcels making up the farm is less than 20 acres.
22 If size is to be used as a factor in designating agricultural lands, farm size rather than parcel
23 size is the relevant consideration.
24

25 Agricultural land designation criteria no. 5 therefore fails to comply with RCW 36.70A.030,
26 RCW 36.70A.060 and 36.70A.170.
27

28 **Conclusion:** Petitioner has failed to meet its burden of proof as to the County's
29 classification system for agricultural lands of long-term commercial significance and any
30 inconsistencies alleged between the comprehensive plan provisions concerning it.
31 However, designation criteria numbers 3 and 5 fail to comply with the requirements of the
32

1 GMA to designate and conserve agricultural resource lands. RCW 36.70A.060 and
2 36.70A.170.

3 4 VI. INVALIDITY

5 Petitioner asks the Board to enter a finding of invalidity as to the comprehensive plan
6 designations and zones that allow rural densities greater than one dwelling unit per five
7 acres in the rural area. Petitioner Futurewise's and Thurston County League of Women
8 Voter Prehearing Brief at 29-30.¹² Petitioner also requests that the urban growth areas be
9 found invalid because they have resulted in an average net residential density of 1.73
10 dwelling units per acre in the unincorporated urban growth areas and damage to Puget
11 Sound. *Ibid* at 32.
12

13
14 The County responds that all of the provisions of Resolution 13234 and Ordinance 13235
15 are compliant with the GMA so a finding of invalidity may not be entered. Respondent's
16 Prehearing Brief at 25.
17

18
19 A finding of invalidity may be entered when a board makes a finding of noncompliance and
20 further includes a "determination, supported by findings of fact and conclusions of law that
21 the continued validity of part or parts of the plan or regulation would substantially interfere
22 with the fulfillment of the goals of this chapter." RCW 36.70A.302(1) (in pertinent part).
23

24
25 We have held that invalidity should be imposed if continued validity of the noncompliant
26 comprehensive plan provisions or development regulations would substantially interfere with
27 the local jurisdiction's ability to engage in GMA-compliant planning. See *Butler v. Lewis*
28 *County*, WWGMHB Case No. 99-2-0027c (Order Finding Noncompliance and Imposing
29

30
31 ¹² Petitioner also requests a finding of invalidity based on the lack of variety of rural densities but it is unclear
32 what portions of the resolution and ordinance could be found invalid to address this lack. *Ibid* at 31.

1 Invalidity, February 13, 2004). On the record before us, we do not find that a remand with
2 an order to achieve compliance is insufficient to enable the County to pursue proper
3 planning under the Act. However, if circumstances change such that development
4 applications during the pendency of the County's compliance efforts are likely to vest in
5 ways that will substantially interfere with the achievement of the goals and requirements of
6 the GMA, we will entertain a motion to impose invalidity on provisions of Resolution 13234
7 and Ordinance 13235 that we have found noncompliant in this final decision and order.
8 RCW 36.70A.330(4). Such a motion may be brought at any time until compliance has been
9 found but must be accompanied by documents indicating the conditions justifying a finding
10 of invalidity.
11
12

13 **VII. FINDINGS OF FACT**

- 14 1. Thurston County is a county located west of the crest of the Cascade Mountains
15 that is required to plan pursuant to RCW 36.70A.040.
- 16 2. Petitioner is a non-profit organization that participated in the adoption of Resolution
17 13234 and Ordinance 13235 in writing and orally. Petitioner raised the matters
18 addressed in its Petition for Review to the County in its participation below.
- 19 3. Intervenor is a property owner whose property was added to the Tenino UGA in the
20 County's adoption of Resolution 13234 and Ordinance 13235.
- 21 4. Resolution 13234 and Ordinance 13235 were adopted by the County on
22 November 22, 2004 and notice of adoption was published on November 24, 2004.
- 23 5. Petitioner filed its petition for review of Resolution 13234 and Ordinance 13235 on
24 January 21, 2005.
- 25 6. When the County adopted its comprehensive plan in 1995, it developed its own
26 criteria for determining how to contain existing areas of more intensive development
27 in the rural areas.
- 28 7. In 1997, the legislature adopted the provisions of RCW 36.70A.070(d) that set the
29 requirements for "limited areas of more intensive rural development" (LAMIRDs).
30
31
32

- 1 8. The County's comprehensive plan designates high density rural residential areas
2 which allow 4 dwelling units per acre (SR – 4/1) 2 dwelling units per acre (RR 2/1) 1
3 dwelling unit per acre (RR 1/1) and 1 dwelling unit per two acres (RR 1/2).
4
- 5 9. Thurston County's zoning code contains development regulations setting residential
6 density levels in excess of one dwelling unit per five acres in rural areas: Rural
7 Residential – One Dwelling Unit per Two Acres (RR 1/2) (T.C.C. Ch. 20.10); Rural
8 Residential – One Dwelling Unit per Acre (RR 1/1) (T.C.C. Ch. 20.11); Rural
9 Residential – Two Dwelling Units per Acre (RR 2/1) (T.C.C. Chapter 20.13); and
10 Suburban Residential – Four Dwelling Units per Acre (SR 4/1) (T.C.C. Chapter
11 20.14).
12
- 13 10. All of these residential density levels constitute "more intensive rural development"
14 within the meaning of RCW 36.70A.070(5)(d).
15
- 16 11. 5.5 percent of rural lands in the county are designated for high intensity rural
17 residential uses, i.e. SR – 4/1; RR 2/1; RR 1/1; and RR 1/2.
18
- 19 12. In its 2004 update of its comprehensive plan and development regulations, the
20 County has not applied the statutory LAMIRD criteria to its existing areas of more
21 intensive development in the rural areas.
22
- 23 13. County comprehensive plan Housing and Residential Densities Policies 1 and 2,
24 and Rural Land Use and Activities Policy 8 exempt existing areas of high density
25 rural residential development from the statutory requirements for LAMIRDs.
26
- 27 14. The Thurston County Comprehensive Plan Land Use Element contains a
28 discussion of rural area designations. CP at 2-17 – 2-27. This discussion includes
29 the criteria for inclusion in any of the rural area designations, including the higher
30 density residential designations. CP at 2-24 – 2-27. None of the criteria include a
31 review of the existence of development as of July 1, 1990, nor do they establish
32 logical outer boundaries with reference to the statutory criteria. *Ibid.*
15. T.C.C. 20.09.040(1)(a) establishes a minimum lot size in the RR 1/5 zone as
follows: "Conventional subdivision lot (net) – four acres for single family, eight
acres for duplexes." This development regulation allows one single family dwelling
unit per four acres, rather than one dwelling unit per five acres, in the RR 1/5 zone.
16. 48.3 percent of the County's rural residential areas fall into the RR 1/5 category.
CP Table 2-1A at 2-18 – 2-19.

- 1 17. With such a large portion of the County's rural area designated as RR 1/5, the net
2 density level of one dwelling unit per four acres in the RR 1/5 zone increases the
3 conversion of undeveloped land into sprawling, low-density development in the
4 rural area.
- 5 18. T.C.C. Chapter 20.08A applies to lands in the long-term agricultural district; Ch.
6 T.C.C. 20.08D applies to lands in the long-term forestry district; and T.C.C. Chapter
7 20.62 creates a program for transfer of development rights in long-term
8 commercially significant agricultural lands. All of these designations are resource
9 land designations.
- 10 19. Rural lands are lands "not designated for urban growth, agriculture, forest, or
11 mineral resources." RCW 36.70A.070(5). Thus, the designations of agricultural
12 and forest resource lands do not create a variety of *rural* densities.
- 13 20. Where the rural designations and zones themselves do not include a variety of
14 densities, the comprehensive plan and development regulations must demonstrate
15 how the "innovative techniques" create such varieties of densities in the rural area.
16 The County's comprehensive plan does not describe how any innovative
17 techniques have been used to provide a variety of rural densities in the rural area.
- 18 21. The County has chosen a 2025 total population forecast figure of 334,261. CP
19 Table 2-1 at 2-12.
- 20 22. The OFM population forecast for the county forms the basis for the Buildable Lands
21 Report determination of demand for urban lands in 2025.
- 22 23. The medium scenario regional forecast was found to fall within one percent of the
23 new state medium range forecast (OFM's projection) and was therefore adopted for
24 use in the Buildable Lands Report and, subsequently, the 2004 comprehensive
25 plan update.
- 26 24. The County's buildable lands analysis concludes that the supply of residential land
27 as of 2000 for urban Thurston County will exceed demand for urban residential land
28 in 2025; it found a supply of 18,789 acres and a 2025 demand of 11, 582 acres.
29 Buildable Lands Report for Thurston County, September 2002, Figure II-1 at II-4.
- 30 25. The 2004 update of the comprehensive plan accepts and utilizes the figures from
31 the Buildable Lands Report for residential land supply and demand in urban areas.
32 Thurston County Comprehensive Plan (CP), Facts Section and Land Use Chapter
Table 2-1 at 2-11 – 2-12.

- 1 26. The County's allocation of residential urban lands (18,789 acres) exceeds its
2 projected 2025 demand for such lands (11,582 acres) by 7,205 acres.
- 3 27. Nowhere in the County's comprehensive plan is it indicated that a 38 percent
4 market factor was utilized to increase the amount of acreage that is needed to
5 accommodate projected urban residential growth.
- 6 28. The basis for the use of the urban residential land supply and demand figures is
7 well grounded in the County's Buildable Lands Report.
- 8 29. The comprehensive plan does not include an explanation or justification for the use
9 of a land supply market factor.
- 10 30. The Buildable Lands Report accounted for critical areas deductions in the net
11 developable land available for urban residential development.
- 12 31. The County's comprehensive plan allocates a 2025 residential land demand of 30
13 acres and a corresponding land supply of 81 acres for the Bucoda UGA. CP
14 Table 2-1.
- 15 32. The County's comprehensive plan allocates 353 acres for urban residential land
16 demand in the Tenino UGA 2025 and projects a corresponding land supply of 505
17 acres. CP Table 2-1.
- 18 33. Urban Growth Area Policy 8(b) (CP at 2-50) provides for expansion of UGA
19 boundaries when "There can be shown an overriding public benefit to public health,
20 safety and welfare by moving the urban growth boundary."
- 21 34. Urban Growth Area Policy 8(b) and the expansion of the Tenino and Bucoda UGAs
22 expand UGA boundaries beyond those lands needed to accommodate projected
23 urban population growth.
- 24 35. Almost 15 percent of land in the County is used for local agriculture. CP Chapter
25 Three – Natural Resources, pp. 3-3 – 3-7.
- 26 36. Petitioner's abbreviated argument simply does not demonstrate how the County's
27 classification system fails to follow Agriculture Handbook No. 210.
- 28 37. Chapter 3 of the County comprehensive plan provides that "Designated agricultural
29 lands should include only areas that are used for agriculture." Thurston County
30 Comprehensive Plan, Chapter Three – Natural Resource Lands, p. 3-4. This
31 provision limits the designation (and thus conservation) of agricultural lands to
32 those that are currently in use for agriculture.

- 1 38. County criteria number 5 for designation of agricultural resource lands requires that
2 the predominant parcel size must be 20 acres or more. Thurston County
3 Comprehensive Plan, Chapter Three – Natural Resource Lands, p. 3-4.
- 4 39. Using predominant parcel size of 20 acres as a designation criterion may exclude
5 viable farms in which the total acreage farmed is in excess of 20 acres in size but
6 each of the parcels making up the farm is less than 20 acres

7
8 **VIII. CONCLUSIONS OF LAW**

- 9 A. This Board has jurisdiction over the parties to this action.
- 10 B. This Board has jurisdiction over the subject-matter of this action.
- 11 C. Petitioner has standing to raise the issues in its Petition for Review.
- 12 D. The petition for review in this case was timely filed.
- 13 E. The County's high density rural residential designations (SR – 4/1; RR 2/1; RR 1/1;
14 and RR 1/2); Housing and Residential Densities Policies 1 and 2, and Rural Land
15 Use and Activities Policy 8; and the County's development regulations
16 implementing these designations (T.C.C. Ch. 20.10; T.C.C. Ch. 20.11; T.C.C.
17 Chapter 20.13; and T.C.C. Chapter 20.14) fail to comply with RCW 36.70A.070(5).
- 18 F. T.C.C. 20.09.040(1)(a) fails to comply with RCW 36.70A.070(5)(c) and (d) by
19 effectively increasing the rural residential density in the RR 1/5 zone from one
20 dwelling unit per five acres to one single-family dwelling unit per four acres.
- 21 G. The County's comprehensive plan and development regulations fail to provide for a
22 variety of rural densities in the rural element as required by RCW 36.70A.070(5)(b).
- 23 H. The County's UGA designations and development regulations implementing them
24 fail to comply with RCW 36.70A.110 by creating UGA boundaries that significantly
25 exceed the projected demand for urban residential lands over the course of the 20-
26 year planning horizon.
- 27 I. Urban Growth Area Policy 8(b) fails to comply with RCW 36.70A.110(1) and (2).
- 28 J. Petitioner has failed to meet its burden of proof as to the County's classification
29 system for agricultural lands of long-term commercial significance and any
30 inconsistencies alleged between the comprehensive plan provisions concerning it.
31 Therefore, these provisions are compliant with the GMA.
- 32

- 1 K. Petitioner has failed to meet its burden of proof that the County's failure to consider
2 farmlands of statewide importance violates the goals and requirements of the GMA.
3
4 L. Agricultural land designation criteria numbers 3 and 5 (Thurston County
5 Comprehensive Plan, Chapter Three – Natural Resource Lands, p. 3-4.) fail to
6 comply with the requirements of the GMA to designate and conserve agricultural
7 resource lands. RCW 36.70A.060 and 36.70A.170.
8

9 **IX. ORDER**

10 The County is ordered to achieve compliance with the Growth Management Act pursuant to
11 this decision no later than January 18, 2006. The following schedule for compliance,
12 briefing and hearing shall apply:
13

14

15 Compliance Due	January 17, 2006.
16 Compliance Report (County to file 17 and serve on all parties)	January 24, 2006.
18 Any Objections to a Finding of 19 Compliance Due	February 17, 2006.
20 County's Response Due	March 10, 2006
21 Compliance Hearing (location to be 22 determined)	March 22, 2006

23

24 **The Board incorporates the findings and conclusions of its Order Denying Motions**
25 **To Dismiss, April 21, 2005, by reference in this final decision and order. As part of**
26 **this final decision and order, the Order Denying Motions To Dismiss shall also**
27 **become a final order upon entry of this decision.**
28

29 **Pursuant to RCW 36.70A.300 this is a final order of the Board.**

30 **Reconsideration. Pursuant to WAC 242-02-832, you have ten (10) days from the**
31 **mailing of this Order to file a petition for reconsideration. Petitions for**
32 **reconsideration shall follow the format set out in WAC 242-02-832. The original and**

1 three copies of the petition for reconsideration, together with any argument in
2 support thereof, should be filed by mailing, faxing or delivering the document directly
3 to the Board, with a copy to all other parties of record and their representatives.

4 Filing means actual receipt of the document at the Board office. RCW 34.05.010(6),
5 WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for
6 filing a petition for judicial review.

7 Judicial Review. Any party aggrieved by a final decision of the Board may appeal the
8 decision to superior court as provided by RCW 36.70A.300(5). Proceedings for
9 judicial review may be instituted by filing a petition in superior court according to the
10 procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil

11 Enforcement. The petition for judicial review of this Order shall be filed with the
12 appropriate court and served on the Board, the Office of the Attorney General, and all
13 parties within thirty days after service of the final order, as provided in RCW
14 34.05.542. Service on the Board may be accomplished in person, by fax or by mail,
15 but service on the Board means actual receipt of the document at the Board office
16 within thirty days after service of the final order.

17 Service. This Order was served on you the day it was deposited in the United States
18 mail. RCW 34.05.010(19)

19 Entered this 20th day of July 2005.

20
21 _____
22 Margery Hite, Board Member

23
24 _____
25 Holly Gadbow, Board Member

26
27 _____
28 Gayle Rothrock, Board Member